

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 08/18/2020 EVENT TIME: 08:20:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2019-00532594-CU-PO-VTA
CASE TITLE: PALACIOS VS. LANTHIER

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Demurrer (CLM) - to Cross Complaint
CAUSAL DOCUMENT/DATE FILED: Demurrer, 07/08/2020

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

COVID-19 NOTICE: Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: www.courtcall.com or call 888-882-6878.

The following is the Court's tentative decision concerning the demurrer of cross-defendant, Christopher Plue ("Plue"), to the Cross-Complaint of cross-complainant, Malorie Lanthier ("Lanthier"), in this action arising from the Complaint of plaintiff, Yadira Palacios ("Palacios"), and related cross-actions:

Meet & Confer

The Court finds the parties met and conferred as required by Code of Civil Procedure section 430.41.

Legal Principles

In ruling on a demurrer, the Court treats all properly pleaded facts in the complaint as admitted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) The demurrer is limited to the four corners of the complaint and any additional facts which are properly the subject of judicial notice. (Code of Civ. Proc., § 430.30, subd.(a).) If there is a reasonable possibility that a pleading deficiency can be cured, it is an abuse of discretion for the Court to deny leave to amend. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Demurrers on the ground of uncertainty are disfavored and should only be sustained in the event the complaint is so vaguely and deficiently pleaded that the demurring defendant reasonably cannot intelligently respond to the complaint. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, 17 Cal.Rptr.2d 708.)

Complaints and cross-complaints must allege facts, not merely conclusions, supporting each cause of action. (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509, 85 Cal.Rptr.3d 268.)

Ruling on Demurrer

TENTATIVE RULINGS

The Court SUSTAINS the general demurrer of Plue to Lanthier's Cross-Complaint WITH LEAVE TO AMEND. Lanthier's Cross-Complaint against Plue contains virtually no specific factual allegations giving rise to a claim of equitable indemnity or comparative contribution against Plue arising from the fire loss which is the subject of this litigation. (See *Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 37 Cal.Rptr.3d 528; *Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 34 Cal.Rptr.3d 157.)

The Court declines Plue's request to deny Lanthier the opportunity to cure the above-described defect by amendment. The Court concludes it would be an abuse of its discretion to not permit Lanthier to amend the Cross-Complaint to plead sufficient facts, if any, supporting the indemnity and declaratory relief causes of action against Plue. The Court cannot conclude at this juncture that any such effort by Lanthier necessarily would constitute a "sham pleading." Accordingly, leave to amend is granted. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Lanthier shall serve and file a First-Amended Cross-Complaint consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court by no later than **September 8, 2020**.

Counsel for Plue shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to and incorporated by reference in any such proposed order in lieu of copying same verbatim in the body of the document.